

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

SEARS HOLDINGS CORPORATION, *et al.*,
Debtors.¹

Chapter 11

Case No. 18-23538 (RDD)
(Jointly Administered)

SANTA ROSA MALL, LLC,

Appellant,

v.

SEARS HOLDINGS CORPORATION, *et al.*,
Appellees.

Case No. 20-cv-03923 (PMH)

**STIPULATED ORDER REGARDING SEALED DOCUMENTS ON APPEAL
PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 8009(f)**

¹ The Debtors/Appellees in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); SR – Rover de Puerto Rico, LLC (f/k/a Sears, Roebuck de Puerto Rico, Inc.) (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Rover Business Unit, LLC (f/k/a Sears Brands Business Unit Corporation) (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

Santa Rosa Mall, LLC (“Santa Rosa” or “Appellant”) and the above-captioned Debtors/Appellees (together with Santa Rosa, the “Parties”), hereby stipulate and agree as follows:

RECITALS

1. On October 15, 2018, the Debtors filed their voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”).

2. On December 7, 2018, the Bankruptcy Court entered an *Amended Stipulated Protective Order* (Lead Case No. 18-23548, ECF No. 1084) (the “Protective Order”), which provides for the protection of “Confidential Material” and “Highly Confidential Material.”

3. On February 8, 2019, Santa Rosa’s counsel executed “Exhibit A” of the Protective Order and became bound by it.

4. On February 11, 2019, the Debtors produced certain discovery material designated as “Confidential Material”, including a *Confidential Settlement and Release Agreement* (the “Settlement Agreement”)

5. On June 7, 2019, Santa Rosa filed a *Motion for Leave to File Under Seal* an adversary proceeding and exhibits in support thereof (Lead Case No. 18-23538, ECF No. 4151), due to the adversary complaint’s inclusion of information regarding, and attachment of a copy of, the Settlement Agreement. On the same date, Santa Rosa filed redacted copies of its adversary complaint against the Debtors (the “Adversary Complaint”) in a separate adversary proceeding (Adversary Case No. 19-8266, ECF No. 1), and on the docket of the lead bankruptcy case (Lead Case No. 18-23538, ECF No. 4153). The Bankruptcy Court granted the June 7, 2019 *Motion for Leave to File Under Seal* on June 20, 2019. See Lead Case No. 18-23538, ECF No. 4300. On

August 15, 2019, the Parties stipulated to voluntary dismissal of Santa Rosa's adversary complaint. See Adversary Case No. 19-8266, ECF No. 11.

6. On September 11, 2019, Santa Rosa filed another *Motion for Leave to File Under Seal* (Lead Case No. 18-23538, ECF No. 5123), and a redacted version of its *Supplemental Motion for an Order Finding the Automatic Stay Inapplicable or, in the Alternative, for Relief from the Automatic Stay and Memorandum of Law in Support Thereof* (Lead Case No. 18-23538, ECF No. 5124) (the "Second Motion for Relief from Stay"), which also included information regarding, and attached a copy of, the Settlement Agreement. The Bankruptcy Court granted the September 11, 2019 *Motion for Leave to File Under Seal* on September 19, 2019 (Lead Case No. 18-23538, ECF No. 5185).

7. On October 21, 2019, the Parties executed and filed a *Stipulation, Agreement[sic], and Order Between the Debtors and Santa Rosa Mall, LLC Granting Limited Relief From the Automatic Stay* (Lead Case No. 18-23538, ECF No. 5435) ("Stipulation and Order"), wherein they stipulated, *inter alia*, that the Second Motion for Relief from Stay would be deemed withdrawn without prejudice. The Stipulation and Order was approved by the Bankruptcy Court on October 30, 2019. See Lead Case No. 18-23538, ECF No. 5537.

8. On January 7, 2020, Santa Rosa filed another *Motion for Leave to File Under Seal* (Lead Case 18-23538, ECF 6316), and a redacted version of its *Motion for and an Order Finding the Automatic Stay Inapplicable or, in the Alternative, for Relief from the Automatic Stay and Memorandum in Support Thereof* (Lead Case No. 18-23538, ECF No. 6317) (the "Third Motion for Relief from Stay"), which also included information regarding, and attached a copy of, the Settlement Agreement.

9. Unredacted versions of the Adversary Complaint, the Second Motion for Relief from Stay, and the Third Motion for Relief from Stay (collectively, the “Sealed Documents”) were each provided to the Clerk of the Bankruptcy Court pursuant to Paragraph 13 of the Protective Order, 11 U.S.C. §§ 105(a), 107(b), Fed. R. Bankr. P. 9018, and SDNY LBR 9018-1.

10. On February 20, 2020, Debtors’ counsel informed the Court that the “Confidential” designation of the Settlement Agreement was removed. On the same date, the Bankruptcy Court requested Santa Rosa file an unredacted version of the Third Motion for Relief from Stay and the Settlement Agreement on the public docket.

11. On February 21, 2020, Santa Rosa filed a *Statement Certifying Compliance*, (Lead Case No. 18-23538, ECF No. 7326), which included unredacted copies of the Third Motion for Relief from Stay and the Settlement Agreement, which had previously been filed under seal.

12. As a result, the Settlement Agreement and Third Motion for Relief From Stay are now publicly available on the docket of the lead bankruptcy case. However, the unredacted versions of the Adversary Complaint and the Second Motion for Relief from Stay remain under seal pursuant to the Bankruptcy Court’s earlier orders.

13. On April 30, 2020, the Bankruptcy Court entered an *Order Denying Motion of Santa Rosa Mall, LLC for Relief from the Automatic Stay* (“Order”, Lead Case 18-23538, ECF No. 7881).

14. On May 14, 2020, Santa Rosa filed a *Notice of Appeal* of the Order (Lead Case No. 18-23538, ECF No. 7952).

15. On May 20, 2020, Santa Rosa’s appeal was docketed in the United States District Court for the Southern District of New York (the “District Court”), Case No. 20-cv-03923, at ECF No. 1.

16. On May 28, 2020, Santa Rosa filed a *Statement of Issues to be Presented and Designation of Items to be Included in the Record on Appeal* (the “Statement of Issues”, Lead Case No. 18-23538, ECF No. 7987), designating certain of the Sealed Documents, *inter alia*, to be included in the record on appeal.

AGREEMENT

NOW, THEREFORE, the Parties stipulate and agree as follows:

1. The original reason for sealing and redacting the information contained in the Sealed Documents no longer exists because the information contained therein is no longer Confidential Material under the terms of the Protective Order.

2. As such, there is no further basis for the unredacted versions of the Sealed Documents to remain under seal in the Bankruptcy Court.

3. To the extent any of the Sealed Documents is designated by any of the Parties to be included in the record on appeal, the Clerk of the Bankruptcy Court shall transmit the unredacted Sealed Documents to the Clerk of the District Court, pursuant to Fed. R. Bankr. P. 8009(f). The Clerk of the District Court shall accept any such Sealed Documents and treat them as part of the public appellate record.

4. This stipulated order is intended to satisfy the requirements of Fed. R. Bankr. P. 8009(f).

5. The terms and conditions of this stipulated order shall be immediately effective and enforceable upon entry.

6. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the implementation of this stipulated order.

[Signature Page Follows]

IN WITNESS WHEREOF, this stipulated order has been executed and delivered as of the day and year first below written.

Dated: June 12, 2020

By: Jacqueline Marcus

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Attorneys for Appellant

SO ORDERED:

Dated: New York, New York
June 15, 2020



THE HONORABLE PHILIP M. HALPERN
UNITED STATES DISTRICT JUDGE